

WESTERN NUCLEAR, INC.

IBLA 84-180, 84-181,
84-242

Decided July 12, 1984

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio in whole or in part. W MC-143384, et al.

Reversed in part, affirmed in part.

1. Mining Claims: Generally -- Mining Claims: Extralateral Rights -- Mining Claims: Lands Subject to -- Mining Claims: Lode Claims -- Mining Claims: Withdrawn Land -- Public Lands: Classification -- Segregation

Where a lode mining claim is located partially on withdrawn or patented land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

APPEARANCES: Charles H. Brownman, Esq., and Howard R. Hertzberg, Esq., Lakewood, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Western Nuclear, Inc., 1/ has appealed from three decisions of the Wyoming State Office, Bureau of Land Management (BLM), dated November 4, 1983, declaring appellant's lode mining claims null and void ab initio in whole or in part because they were located when the land was segregated from mineral entry. 2/

1/ The decision in IBLA 84-180 was issued to Pathfinder Mines Corporation (Pathfinder). However, by letter dated Dec. 1, 1983, appellant informed BLM that it holds a royalty interest in the claims and has an option to reacquire title to the claims under a purchase agreement with Pathfinder. 2/ IBLA 84-180 involves the following mining claims which were declared null and void ab initio in part: HI Nos. 183 through 191, W MC-143384 through W MC-143392. The claims were all located July 26, 1967. IBLA 84-181 involves the following mining claims which were declared null and void ab initio in whole or in part: Jan Nos. 54 through 63, W MC-143519 through W MC-143528.

Appellant's mining claims were located in 1967 and 1969 and filed for recordation with BLM on October 9, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982). In its November 1983 decisions, BLM declared appellant's mining claims null and void ab initio because when they were located the land was either segregated pursuant to notices of proposed classification of public lands for multiple use management (W-6228), dated May 12, 1967 (32 FR 7405 (May 18, 1967)), and September 18, 1970 (35 FR 14861 (Sept. 24, 1970)), or not open to mineral entry pursuant to section 14 of the Act of July 25, 1868, 15 Stat. 183 (1868). ^{3/} The notices of proposed classification, in accordance with their terms, segregated the affected land "from appropriation under the general mining laws (30 U.S.C. 21)" on the respective dates of their publication in the Federal Register, pursuant to 43 CFR 2410.1-4 (30 FR 12919 (Oct. 9, 1965)). In section 14 of the Act of July 25, 1868, supra, Congress reserved certain land in the territory of Wyoming "for the purpose of being applied to public schools in the State or States hereafter to be erected out of the same." The master title plat for the affected land (secs. 16 and 36) indicates that the land has since been patented. In its November 1983 decisions, BLM noted that because "the lands were not open to entry at the time of the claim locations, there is no necessity for the Government to initiate formal contest proceedings," citing Rudolph Chase, 8 IBLA 351, 353 (1972).

fn. 2 (continued)

The claims were all located Jan. 8, 1969. The Jan Nos. 54, 56, 58, and 60 mining claims were declared null and void ab initio in whole. IBLA 84-242 involves the following mining claims which were declared null and void ab initio in whole or in part: HI Nos. 1, 2, 11, 12, 80, 95, 102 through 104, and 119, W MC-143233, W MC-143234, W MC-143243, W MC-143244, W MC-143309, W MC-143324, W MC-143331 through W MC-143333, and W MC-143348. The claims were all located July 26, 1967.

The HI No. 1 mining claim was declared null and void ab initio in whole.

^{3/} The mining claims involved in IBLA 84-180, with the exception of the HI No. 183 claim, were declared null and void ab initio in part because they were located on the following land which was segregated from mineral entry by notice of proposed classification W-6228, effective May 18, 1967: lots 4, 5, 12, and 13, sec. 25, T. 28 N., R. 92 W., sixth principal meridian, Wyoming. The portion of the HI No. 183 claim was declared null and void ab initio because it was located on sec. 36 that was reserved under section 14 of the Act of July 25, 1868, supra. The mining claims involved in IBLA 84-181 were declared null and void ab initio in whole or in part because they were located on the following land which was segregated from mineral entry by notice of proposed classification W-6228, effective May 18, 1967: S 1/2 NW 1/4, N 1/2 SW 1/4 sec. 15, T. 27 N., R. 90 W., sixth principal meridian, Wyoming. The mining claims involved in IBLA 84-242 were declared null and void ab initio in whole or in part because they were located on the following land which was segregated from mineral entry by notices of proposed classification W-6228: NE 1/4 SW 1/4 sec. 27 (effective May 18, 1967), NE 1/4 SW 1/4 sec. 29 (effective May 18, 1967), and E 1/2 NE 1/4 sec. 34 (effective Sept. 24, 1970), T. 28 N., R. 91 W., sixth principal meridian, Wyoming.

[1] We have indicated recently that the validity of a lode mining claim located partially on withdrawn or patented lands depends on whether the claim is supported by a discovery on lands open to mineral location. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across patented or withdrawn land to define the extralateral rights to lodes or veins which apex within the claim, although he will not have any rights to the surface of these lands, and, depending on the circumstances, may or may not have any mineral rights in the subsurface of such land. Santa Fe Mining, Inc., 79 IBLA 48, 52 (1984). 4/ Because the location of a discovery is a matter of fact that cannot be determined by reference to the "discovery point" on a notice of location filed in accordance with 43 U.S.C. § 1744 (1982), we have suggested that BLM not attempt to adjudicate the validity of such lode claims except in the context of a mining claim contest, and have reversed the BLM decisions declaring portions of claims located on withdrawn or patented lands null and void ab initio. Amoco Minerals Co., 81 IBLA 23 (1984); Anthony Juskiewicz, 79 IBLA 267 (1984); Marilyn Dutton Hansen, 79 IBLA 214 (1984); Santa Fe Mining, Inc., *supra*.

In accordance with these decisions, BLM's decision declaring the HI Nos. 183 through 191 lode claims null and void ab initio in part (IBLA 84-180) must be reversed. BLM's decision declaring the Jan Nos. 55 and 57 lode claims null and void ab initio in part (IBLA 84-181) must also be reversed. 5/ Likewise, BLM's decision declaring the HI Nos. 80, 95, 102, 103, 104, and 119 lode claims null and void ab initio in part (IBLA 84-242) must be reversed. 6/

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions

4/ This is so even if the discovery point described in the location notice is on withdrawn land. As long as there is an actual discovery somewhere on the portion of the claim open to mineral entry, it does not matter where the discovery point described in the location notice is. See generally Lindley on Mines § 338 (3d ed. 1914). Cf. Morrison's Mining Rights (16th ed. 1936) 32.

5/ In its statement of reasons, Western Nuclear, Inc., did not defend the validity of the Jan Nos. 59, 61, 62, and 63 claims. The portion of this BLM decision declaring the Jan Nos. 54, 56, 58, and 60 null and void ab initio in whole may be affirmed, since the claims were located entirely on land segregated by "Proposed Classification of Public Lands for Multiple Use Management Wyoming 6228" issued in May 1967. 32 FR 7405 (May 18, 1967). Anthony Juskiewicz, *supra*.

6/ The portion of this decision declaring the HI No. 1 null and void ab initio in whole and the HI Nos. 2, 11, and 12 null and void ab initio in part must be reversed because the claims were located in the NE 1/4 sec. 34, T. 28 N., R. 91 W., in July 1967, before most of that quarter section was segregated by "Notice of Proposed Classification of Public Lands Wyoming 6228" issued in September 1970. 35 FR 14861 (Sept. 24, 1970).

appealed from are reversed except as to Jan Nos. 54, 56, 58, 59, 60, 61, 62, and 63, as to which claims the decision is affirmed.

Will A. Irwin

Administrative Judge

We concur

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge.

